

REMARKS

Upon entry of the present amendment, claims 1-5 will remain pending in the above-identified application and stand ready for further action on the merits.

The amendments made herein to the claims do not introduce new matter into the application as originally filed. Moreover, the amendments find support in the application as originally filed. For example, amendments to claim 1 find support in the original specification at page 6, lines 2-6 and 10-12, and at page 8, lines 21-28.

***Claim Rejections Under 35 USC § 112***

Claims 1-5 have been rejected under 35 USC § 112, first paragraph, for allegedly containing subject matter not described in the specification in such a way as to reasonably convey to one skilled in the art that at the time of the application filing, Applicants had possession of the claimed invention. Reconsideration and withdrawal of the rejection is respectfully requested based upon the amendment of claims 1 and 3 herein. In this respect, claims 1 and 3 have been amended to agree with disclosure in Applicants' specification, for example, at pages 8, lines 21-28.

Additionally, regarding claim 3, it is noted that the claim now recites "the outer sheet" to clarify that this outer sheet is

the same outer sheet recited in claim 2, from which claim 3 depends.

***Claim Rejections Under 35 USC § 102/103***

Claims 1-4 have been rejected under 35 USC § 102(e) as being anticipated by Ashton et al. (WO 99/60969 A1). Reconsideration and withdrawal of each of these rejections is respectfully requested based upon the amendments made herein, as well as the following comments and considerations.

In instant independent claim 1, it is positively recited as follows:

*"...(3) the body-surrounding elastic members are each secured in their stretched state at the side portions of said body-surrounding portion to thereby manifest contractibility, with the body-surrounding elastic members being both disposed between and joined to an inner sheet and an outer sheet, and the body-surrounding elastic members thereby forming gathers at the side portions of said body-surrounding portion".*

The above recitation in claim 1 is nowhere taught, disclosed or otherwise rendered obvious by the cited Ashton et al. reference. Based on this fact, Applicants submit that it is impossible for the cited Ashton et al. reference to either anticipate Applicants' claimed invention under 35 USC § 102(e) or render the same obvious under the provisions of 35 USC § 103(a).

In support of the above contention, Applicants note as follows.

First, nowhere in the cited Ashton et al. reference does there appear to be any disclosure and/or drawing of any "gathers" as recited in claim 1 (and its dependent claims 2-5).

Second, upon review of the cited Ashton et al. reference, for example at page 26, lines 17-30, and page 27, lines 12-28 (particularly lines 16 and 27), and in Figures 5-6 thereof, it can easily be seen that the side elastic member 70 taught by Ashton et al. does not produce gathers as recited in the instant claims. In support of this contention, Applicants quote from page 26 of the cited Ashton et al. reference, lines 17-22:

*"Since the side elastic member 70 will be subjected to mechanical stretching before and during use, the first and second coverstock layers 122 and 126 preferably has a relatively high elongation at breaking, and are more preferably stretchable or elongatable, yet more preferably drawable (but not necessarily elastomeric), without undue and preferably without any, tearing or ripping."*

Accordingly, the above description from the cited Ashton et al. reference clearly teaches and provides for a high elongation of breaking for coverstock layers, and that they are "more preferably stretchable or elongatable, yet more preferably drawable (but not necessarily elastomeric)". Notably, such a requirement of the coverstock would not be needed if the Ashton et al. provided side elastic members (and/or articles) contained or formed gathers, because the presence of such gathers by themselves would allow for stretching. As such, the teachings of the cited Ashton et al.

reference clearly support Applicants' contention that Ashton et al. do not teach or provide for an article having gathers therein.

Third, at page 27, lines 16 and 27 of the Ashton et al reference, it is clearly indicated that Ashton et al. wish to eliminate "creep", which would be inconsistent with any concurrent provision for the occurrence or formation of "gathers".

Forth, upon review of Figures 5-6 of Ashton et al. it can be seen that the side-elastic members 70 are drawn out and pictured in a level (or even) fashion, indicating that gathers are not present.

Fifth, it is noted that the provision of gathers on the center of a diaper, or on an absorbent core, would generally be thought to cause difficulty in putting the same on a wearer (baby), and would generally be thought to cause a leak of water if the absorbent core was very soft (e.g., especially if the absorbent core possessed a Taber stiffness of 0.5 to 20 gf·cm — as recited in instant claim 5). However, the present Inventors have been able to provide an advantageous shorts-type disposable diaper having gathers at the side portions of a body-surrounding portion thereof, while at the same time overcoming such difficulties and leak properties (which is clearly shown in the instant specification, e.g., at page 13 in Table 1).

Lastly, it is noted that by providing gathers in the present inventive shorts-type disposable diaper the Inventors have also

been able to allow for evaporation of sweat from the wearer (baby), which is also advantageous.

CONCLUSION

Based upon the above considerations, it is submitted that each of the pending claims are currently patentable under the provisions of Title 35 of the United States Code. The Examiner is respectfully requested to issue a Notice of Allowance clearly indicating this fact.

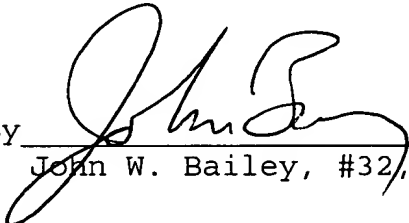
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John W. Bailey (Reg. No. 32,881) at the telephone number below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

Attached hereto is a marked-up version of the changes made to the application by this Amendment.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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Attachment: Version with Markings to Show Changes Made

(Rev. 04/30/03)

VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

The claims have been amended as follows:

1. (Twice Amended) A shorts type disposable diaper comprising a liquid-permeable topsheet, a liquid-impermeable anti-leakage sheet and a liquid-retentive absorbent core, a body-surrounding portion which is located between a waist opening portion and a leg opening portion, with said body-surrounding portion containing side portions, and a plurality of body-surrounding elastic members provided at the body-surrounding portion, with said body-surrounding elastic members extending in a circumferential width direction of the diaper, wherein:

said plurality of body-surrounding elastic members are fixedly disposed at least at each of said side portions of said diaper, and which body-surrounding elastic members extend in the circumferential width direction of the diaper and outward in a stretched state from longitudinal side edges of said absorbent core, and thereby manifest elastic contractibility at said side portions of the diaper, provided that:

(1) the body-surrounding elastic members are not disposed in at least a center portion of said body-surrounding portion where said absorbent core exists, or alternatively,

(2) said body-surrounding elastic members are disposed in a center portion of said body-surrounding portion where said absorbent core exists in such a manner that elastic contractibility is not manifested thereby in at least said center portion of said diaper, and

(3) the body-surrounding elastic members are each secured in their stretched state at the side portions of said body-surrounding portion to thereby manifest contractibility, with the body-surrounding elastic members being both disposed between and joined to an inner sheet and an outer sheet, and the body-surrounding elastic members thereby forming gathers at the side portions of said body-surrounding portion;

wherein a ratio of a width of said absorbent core to a width of said diaper at a position where said body-surrounding elastic members are disposed is 30 to 60%, when the diaper is laid on a flat surface, and

wherein a ratio of a width of portions of said diaper that contain therein said elastic members [in a stretched state, with] that manifest elastic contractibility [being manifested thereby,] to the width of said diaper where elastic members are disposed is 40 to 95%, when the diaper is laid on a flat surface.

3. (Twice Amended) The shorts type disposable diaper according to claim 2, wherein:



said diaper comprises an absorbent body containing said topsheet, said anti-leakage sheet and said absorbent core and an exterior member containing [an] the outer sheet,

said exterior member being disposed on a side of said absorbent body having said anti-leakage sheet, and said absorbent body and said exterior member are fixed together by partial bonding.